



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,534	12/05/2003	Eric P. Berg	P686 CON2	7333
7590 Medtronic Vascular, Inc. Legal Department 3576 Unocal Place Santa Rosa, CA 95403		EXAMINER GANESAN, SUBA ART UNIT PAPER NUMBER 3738		
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/20/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/727,534	BERG ET AL.	
	Examiner Suba Ganesan	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 March 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-8,11,12 and 25-39 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,4,5,9,10 and 13-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/24/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

1DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A in the reply filed on 3/22/2007 is acknowledged. Claims 3, 6-8, 11-12, and 25-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2,4-5, 9-10,13,15-16,18-20,22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sahatjian (U.S. Pat. No. 5304121).

4. Sahatjian discloses a delivery catheter, a stent framework and a porous material with a water insoluble salt of a therapeutic material (see figs. 4-6 and col. 9 lines 21-34). The stent framework is made of a metal (nitinol) and can be self expanding (col. 10 lines 7-10). The stent framework is a combination of metallic and polymeric elements; note that examiner is considering a polymeric (hydrogel) coating on a metallic stent to be a framework comprising metallic and polymeric elements. The stent can further comprise a bioadsorbable coating (col. 9 lines 15-20). With respect to claims 13 and 15, note that

examiner is further considering a coating to be a film. Sahatjian further discloses the use of heparin salt as a therapeutic salt (col. 8 lines 17-30 and col. 10 lines 1-6).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Hunter (U.S. Pat. No. 5716981).

7. Sahatjian is explained supra. However, Sahatjian does not disclose a coating of silicone or a radioactive salt. Hunter teaches the coating of stents (col. 1 lines 13-18) with radioactive materials (col. 15 lines 19-30). The stent material can be silicone (col. 16 lines 31-55). Therefore it would have been obvious to one of ordinary skill in the art to modify the stent of Sahatjian to include silicone for the purpose of creating a less rigid stent to minimize local tissue trauma and facilitate insertion within the body. It would have further been obvious to one of ordinary skill in the art at the time of the invention to modify the therapeutic salt of Sahatjian to include a radioactive material as taught by Hunter for the purpose of providing anti-angiogenic therapy at a specific location.

Art Unit: 3738

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Tang et al. (U.S. Pat. No. 4920203).

9. Sahatjian is explained supra. However, Sahatjian does not disclose the therapeutic salt being a barium salt. Tang teaches the use of Barium salts for a therapeutic coating on stents (col. 20 lines 41-62). Therefore it would have been obvious to one of ordinary skill in the art to modify the therapeutic salt of Sahatjian to be Barium as taught by Tang for the purpose of creating a radiopaque stent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suba Ganesan whose telephone number is 571-272-3243. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SDG 4/9/2007

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

